IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 707 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DY. CONSERVATOR OF FOREST

Versus

SULEMAN ABDULLA HOKLA

Appearance:

MR SAMIR J DAVE , APP, for Petitioners

None present for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/12/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner and perused the order of the Deputy Conservator of Forests, Chhota Udaipur and of the District Judge, Baroda. I have also perused the affidavit filed by R.R. Bhatia, Assistant Conservator of Forests, dated 22-12-1998.

#. Brief facts of the case are that a jeep bearing No.GJM 8071 was stopped and checked by Range Forest Officer. In the jeep, the forest produce belonging to the Government was there. The forest produced along with the vehicle was seized on 16th August, 1993. After notice to the concerned parties, under the order dated 16th August, 1993, the Deputy Conservator of Forests, Chhota Udaipur, ordered for confiscation of the seized jeep. Against this order, the respondent filed an appeal before the District court, which came to be allowed partly under the order dated 29th May, 1998. The order of the Dy. Conservator of Forests, Chhota Udaipur, was modified and confiscation of vehicle was substituted by the order to the respondents to pay Rs.9000/- as compensation. Hence, this special criminal application.

#. Learned counsel for the petitioner submitted that in the appeal in such matter though power lies with the appellate court to modify the order passed by the Dy. Conservator of Forests in the matter of confiscation of vehicle but that power has to be exercised judiciously. In this case, the respondent is a habitual offender and in a habit of carrying forest produce in the vehicle. He submitted that the Deputy Conservator of Forests had made reference to another case of the respondent of carrying of the forest produce in an ambassador car belonging to the respondent. Indiscriminate cutting of forests result in disturbance of ecology and in case the Courts liberally act in such matters then certainly it will result in serious consequences, that is of ecological problems. In such matters, this consideration of cost of forest produce seized and cost of vehicle in which the forest produce was carried, is hardly of any substance and relevance.

#. I find sufficient merits in the contention of the learned counsel for the petitioner. Learned District Judge has not accepted the contention of the respondent that the vehicle was used for illegal transportation of forest produce without his knowledge. Learned District Judge has accepted that the heavy burden lies on the respondent-appellant in the appeal to prove that the said vehicle was not used within his knowledge. Once this contention has not been accepted, I fail to see any justification in the approach of the District Judge, Baroda to extend any sympathy or concession to the respondent. The respondent, as it transpires from the order of the Deputy Conservator of Forests, is in habit of doing this job or made business of carrying forest produce illegally from the jungles, i.e. without permit

in his car. Reference here may have to the earlier Case No.12/88 of Godhra Division and there the respondent's ambassador car was used. That vehicle was ordered to be confiscated in the month of April, 1990 by Deputy Conservator of Forests, Godhra. This time the respondent used the jeep for carrying illegal forest produce. In such matter, certainly no sympathy or concession needs to be extended to the class of person to which the respondent belongs. If such a liberal view is taken then certainly it will result in disturbing the ecology as well as so many other problems. It is not unknown that unscrupulous persons are involved in the activity of illegally cutting the forest deposits of the country and as a result of this illegal activity, total forest deposit of the country is day by day reducing and it will result in disturbance of the ecology. The approach of the learned District Judge in this matter and discretion exercised in favour of the respondent cannot be said to be a judicial one. The order of the District Judge passed in Criminal Appeal No.13/96 on 29th May, 1998, cannot be allowed to stand.

#. In the result, this special criminal application succeeds and the same is allowed and the order of the learned District Judge, Baroda passed in Criminal Appeal No.13/96 dated 29th May, 1998, is quashed and set aside. Rule is made absolute. As none put appearance for the respondent, no order as to costs.

****

zgs/-